

01



0000008650

Arizona Corporation Commission

DOCKETED

RECEIVED  
AZ CORP COMMISSION

JUN 01 1999

BEFORE THE ARIZONA CORPORATION COMMISSION

JUN 1 3 42 PM '99

DOCKETED BY

MM

IN THE MATTER OF THE U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH SECTION 271 OF  
THE TELECOMMUNICATIONS ACT OF  
1996

DOCUMENT CONTROL

Docket No. T-00000B-97-0238

**U S WEST'S REPLY TO SPRINT'S RESPONSE TO U S WEST'S MOTION TO  
COMPEL**

U S WEST Communications, Inc. ("U S WEST") submits this reply to Sprint's Response to U S WEST's motion to compel supplemental responses to the Attachment A and B Data Requests.

**I. INTRODUCTION**

Sprint alleges that U S WEST is attempting to "distort" the Attachment A and B Data Requests to obtain more information than that to which it is entitled. Sprint Response at 1. In the face of Sprint's claims that U S WEST is overreaching, it bears emphasis that Sprint produced no documents in response to any of the Data Requests, even though the Hearing Officers ordered all parties to produce documents "relating" to the Data Requests. Furthermore, Sprint did not respond to the overwhelming majority of the Attachment B Data Requests because it had no "detailed" information relating to any of them. Rather than provide the information it does have in its possession, however, Sprint just refused to respond altogether.

Sprint's principal objections relate to the Attachment A Data Requests because Sprint asserts that U S WEST seeks confidential and competitively-sensitive information from Sprint that is not relevant to this proceeding. The Hearing Officers, not U S WEST, directed all parties to respond to the Attachment A and B requests as if those requests were addressed to each individual party. Thus, the Hearing Officers have already determined that information regarding

1 market entry information is relevant to this proceeding and that Sprint, and all other parties, must  
2 provide that information.

3 Sprint also asserts that U S WEST is rewriting the Data Requests. Sprint interprets the  
4 requests so that no information it has is relevant unless Sprint is providing service. This  
5 construction is wrong and misses the thrust of the Data Requests which specifically, by their  
6 express terms, go to current and projected plans. Furthermore, the Commission is charged with  
7 establishing a record that the FCC can use to evaluate U S WEST's application. U S WEST's  
8 requests for supplemental information seek only to have Sprint respond to the Attachment A and  
9 B Data Requests in a meaningful manner so that the Commission can create a complete and  
10 proper record. In addition, many of U S WEST's requests for supplemental information are a  
11 direct result of the vague responses Sprint provided, not an attempt to expand the Data Requests.  
12 Sprint is not entitled to hide behind vague and ambiguous responses to shut off U S WEST's  
13 right to conduct discovery.

14 Sprint's discovery responses are inadequate and do not comply with the liberal rules of  
15 discovery under Arizona law. Accordingly, the Hearing Division should compel Sprint to  
16 supplement its responses.

## 17 **II. DISCUSSION**

### 18 **A. The Hearing Division Should Compel Sprint To Respond To The** 19 **Attachment A Data Requests At Issue.**

20 Data Request 3: Data Request 3 asks each party to state whether it provides specific  
21 types of service and if it does not, when it intends to provide that service. Sprint responded that  
22 it plans to offer business exchange service and facilities-based service "sometime within the next  
23 18 months" and to offer residential service "eventually." Exhibit 1 to Motion to Compel.  
24 Although the Hearing Officers ordered all parties to produce documents relating to their  
25 responses, Sprint produced no documents relating to this Data Request.  
26

1 Sprint asserts that it "obviously responded fully to the question," Sprint Response at 2,  
2 but it did not answer it at all. Sprint's assertion that it intends to offer business exchange service  
3 "sometime" in the next 18 months and residential service "eventually" does not inform  
4 U S WEST or the Commission "when" Sprint plans to provide these services. All documents in  
5 Sprint's possession that relate to how, when and where Sprint may provide service must be  
6 produced. Without this information, there is no way for the Commission or U S WEST to  
7 evaluate Sprint's assertions or determine if and when, in fact, Sprint plans to offer the services at  
8 issue in the request.<sup>1</sup>

9 Sprint attempts to argue that these documents are not relevant because its plans are  
10 "subject to change." Exhibit 1 to Motion to Compel. Under this theory, future plans are never  
11 relevant because plans may always change. This, of course, is tantamount to overruling the Data  
12 Request altogether. Moreover, Sprint's position ignores the FCC's Section 271 decisions which  
13 state that current and future (i.e., "foreseeable") demands are relevant. Sprint's position also  
14 ignores important public interest considerations attendant to current and projected demands.

15 Sprint argues that its market entry plans in general are not relevant to this proceeding.  
16 Sprint Response at 2. The Hearing Officers, however, have already rejected that argument in  
17 requiring all parties to respond to the Attachment A Data Requests regarding "General  
18 Telecommunications Market Conditions in Arizona." If Sprint believed that information  
19 regarding its market entry plans is irrelevant, the time to raise that objection was at the hearing  
20 on U S WEST's original motion to compel when the Hearing Officers directed the parties to  
21  
22

---

23  
24 <sup>1</sup> This is not a situation in which the information requested simply is not available. Sprint represents that  
25 it has "specific timetables" for its entry plans, but that they are "proprietary" and "subject to change."  
26 Sprint should provide these timetables along with other relevant documents. Furthermore, as U S WEST  
noted in its motion to compel, the very fact that Sprint's timetable for market entry is "subject to change"  
makes the details regarding Sprint's plans all the more relevant.

1 respond to the Attachment A and B Data Requests. Having remained silent, Sprint cannot now  
2 raise its relevancy arguments.

3       Regardless, Sprint's relevancy arguments are meritless. First, Sprint cites the FCC's  
4 Ameritech Michigan Order<sup>2</sup> and Second BellSouth Louisiana Order<sup>3</sup> for the proposition that the  
5 FCC focuses on the current status of competition, not future plans. Sprint Response at 3.  
6 Contrary to Sprint's arguments, these decisions conclusively establish that if and when Sprint  
7 intends to offer residential service is critically important to a threshold issue in this proceeding:  
8 whether U S WEST's application meets the Track A requirements. Furthermore, Sprint's  
9 response that it intends to offer residential service "eventually" suggests that it may decide to  
10 provide such service before the FCC receives U S WEST's application. U S WEST is entitled to  
11 discover whether this is so.

12       Second, Sprint argues that discovery regarding its market entry plans is not relevant to  
13 determining Sprint's "reasonably foreseeable" demand for UNEs. U S WEST cannot establish  
14 that it can provide checklist items in quantities and at the level of quality the Act requires if it  
15 does not have the basic information of which carriers are even likely to request checklist items in  
16 Arizona. Furthermore, which competitors are in the market is clearly relevant to assessing the  
17 type of operational support system ("OSS") interface U S WEST should be expected to provide.  
18 Contrary to Sprint's response, U S WEST is not seeking forecasts of demand from Sprint. It only  
19 seeks to find out when and how Sprint intends to offer service in this state.

20  
21  
22  
23 <sup>2</sup> Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as  
24 amended, to Provide In-Region, InterLATA Service in Michigan, CC Docket No. 97-137, Memorandum  
Opinion and Order (rel. Aug. 19, 1997) ("Ameritech Michigan Order").

25 <sup>3</sup> Application of BellSouth Corp., BellSouth Telecomm., Inc., and BellSouth Long Distance, Inc. for  
26 Provision of In-Region, interLATA Services in Louisiana, CC Docket No. 98-121, Memorandum  
Opinion and Order (rel. Oct. 13, 1998) ("Second BellSouth Louisiana Order")

1 Third, Sprint contends that its market entry plans are not relevant to determining whether  
2 granting U S WEST's application is in the public interest.<sup>4</sup> Sprint Response at 4. Sprint  
3 magnanimously offers that "USW is free to make [its public interest] arguments without having  
4 access to Sprints highly confidential business plans." Id. It would violate U S WEST's due  
5 process rights to require U S WEST to make arguments without access to the information that  
6 could support its positions. Were the Hearing Division to accept Sprint's argument, there would  
7 never be a need for discovery because any party is "free to make . . . arguments" without any  
8 factual support. The Hearing Division should reject Sprint's relevancy arguments.

9 As a final matter, it is no excuse that the information U S WEST seeks is confidential or  
10 proprietary. U S WEST has tendered to Sprint a confidentiality agreement that will fully protect  
11 Sprint's confidential and proprietary information. Thus, Sprint cannot withhold documents on  
12 this basis.

13 Data Request 5: In response to the eight separate subparts of Data Request 5, Sprint  
14 asserts that its response to Data Request 3 -- that it intends to offer business exchange service  
15 "sometime" in the next 18 months and residential service "eventually" -- is fully responsive to  
16 this Data Request. Exhibit 1 to Motion to Compel; Sprint Response at 4. That is simply not  
17 true. When directed to an intervening party and especially in light of Sprint's intent to enter this  
18 market imminently, it is entirely reasonable for U S WEST to demand that Sprint provide the  
19 information requested in the eight subparts of this Data Request regarding its imminent service  
20 plans. At this time, U S WEST would expect Sprint to produce, at a minimum, all information  
21  
22

23 <sup>4</sup> Sprint contends that U S WEST's public interest argument is "self-created." Sprint Response at 4.  
24 Section 271(d)(3) requires the FCC to determine whether granting U S WEST's application is in the  
25 public interest. Accordingly, while this inquiry is separate from determining whether U S WEST meets  
26 the competitive checklist in Section 271(c)(2)(B), it is not "irrelevant" or "self-created." The  
Commission is tasked with establishing a record that will assist the FCC in making the public interest  
determination. Sprint seeks only to deprive the Commission of information necessary to make that  
record and determination.

1 and documents in its possession regarding the scope of the geographic area it will serve (Data  
2 Request 5(c)), the extent to which it will use its own facilities or U S WEST facilities (Data  
3 Request 5(d)), and where it is expanding its facilities (Data Request 5(g)).

4 The goal of the Attachment A Data Requests is to uncover information regarding market  
5 conditions in Arizona. Sprint's overly narrow interpretation -- a transparent attempt to insulate it  
6 from providing any useful information -- does not help the Commission assess the true state of  
7 competition in Arizona. Accordingly, the Hearing Division should compel Sprint to supplement  
8 its response to provide information regarding its service plans in response to the Data Request 5  
9 subparts.

10 Data Request 6: Sprint responds that it need not answer this Data Request since it is  
11 directed to U S WEST. The Hearing Officers determined, however, that all of the parties would  
12 answer all of the Data Requests as if they were directed to each party. Indeed, other parties  
13 (AT&T and ELI, for example) have provided information in response to this Data Request.  
14 Thus, Sprint is incorrect that it need not respond.

15 Sprint also challenges the relevancy of Data Request 6(d). Again, the Hearing Officers  
16 already determined that the information requested is relevant in directing all parties to respond to  
17 this request. Accordingly, Sprint's relevancy argument has been rejected. Sprint again offers  
18 that U S WEST can make its arguments regarding Sprint's ready market for services and  
19 credibility without confidential -- or any -- information from Sprint. As set forth above, this  
20 offer is no defense to Sprint's discovery obligations.

21 Data Requests 9 and 10: Data Requests 9 and 10 ask for information whether U S WEST  
22 will provide service in accordance with Section 272 (Data Request 9) and whether granting its  
23 application is in the public interest (Data Request 10). The Attachment A and B Data Requests  
24 were originally directed to U S WEST only. When these requests are directed to the individual  
25 intervenors, however, it is entirely fair to ask for information that would indicate whether  
26 U S WEST will comply with Section 272 -- both pro and con -- and whether granting

1 U S WEST's application is in the public interest, again both pro and con. One of the primary  
2 purposes of discovery, and the due process principles on which it is based, is to permit  
3 U S WEST to discover information that may be damaging to its case before the hearing on its  
4 application so that it can respond. U S WEST's reading of the Data Requests is hardly unfair.

5 Sprint further asserts that even though it expressly directs U S WEST to its previously  
6 filed testimony in other proceedings as embodying all the current information it has on whether  
7 U S WEST's application will be in the public interest, see Exhibit 2 to Motion to Compel,  
8 U S WEST is not entitled to discovery regarding the information or documents underlying that  
9 testimony because U S WEST allegedly had the opportunity to obtain those materials before.  
10 Sprint Response at 6. Sprint relies on that testimony in this proceeding as stating its current  
11 position on the public interest component of U S WEST's application. Thus, in this proceeding,  
12 U S WEST is entitled to information relating to that testimony.

13 Sprint's argument actually supports U S WEST's position. U S WEST is entitled to  
14 obtain all of the documents underlying Sprint's purported testimony on the public interest  
15 component. Because Sprint points to this testimony as the current statement of its position on  
16 the effect on the public interest of granting U S WEST's application, Sprint should produce the  
17 information requested. Finally, Sprint has never filed testimony in any proceeding on Section  
18 272. Thus, for Data Request 9, U S WEST has nothing to review.

19 **B. Sprint Must Produce All Information In Its Possession Regarding**  
20 **U S WEST's Compliance With the Checklist Items Addressed In The**  
**Attachment B Data Requests.**

21 In Response to Data Request 1 of Attachment B, Sprint responded that it has no  
22 information regarding the availability of interconnection from U S WEST "aside from having  
23 requested physical collocation at certain U S WEST central offices." Exhibit 1 to Motion to  
24 Compel. Sprint also responds to Data Request 9 of Attachment B. Id. Sprint did not respond to  
25 any other Attachment B Data Request, and produced no documents relating to any them (even  
26 those it answered), because it asserted that it had no "**detailed** independent knowledge" in

1 response to any of them. Id. However, under the liberal rules of discovery that apply in Arizona,  
2 U S WEST is entitled not only to "detailed" information, it is entitled to all information in  
3 Sprint's possession regarding the topics covered in the Data Requests. Sprint as much as admits  
4 that it has some information when it states that it could respond regarding "what USW claims to  
5 be providing" and that it is "formulating its specific positions regarding USW's checklist  
6 compliance." Sprint Response at 7-8. U S WEST is entitled to this and any other responsive  
7 information. If Sprint believes that any of this material is privileged, it should produce a  
8 privilege log.

9 The Attachment B Data Requests go to the heart of this proceeding as even Sprint admits.  
10 See Sprint Response at 4 (characterizing "whether USW has opened its local markets to  
11 competition by fully complying with the competitive checklist" as the "central issues of this  
12 case"). Given the importance of the issues in the Attachment B Data Requests, U S WEST is  
13 within bounds to ask Sprint to provide U S WEST with its evaluation of U S WEST's compliance  
14 with the checklist items and provide information and documents related to those evaluations.

### 15 **III. CONCLUSION**

16 U S WEST seeks only to avoid unfair surprise and discover the information in Sprint's  
17 possession regarding the issues covered in the Data Requests. The Hearing Officers have already  
18 determined that information from all parties is relevant, and the parties' confidentiality agreement  
19 addresses Sprint's confidentiality concerns. For these reasons and those set forth in U S WEST's  
20 motion to compel, the Hearing Division should grant U S WEST's motion and order Sprint to  
21 supplement its Data Request responses as set forth in U S WEST's motion to compel.

22 . . . .

23 . . . .

24 . . . .

25 . . . .

26 . . . .



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Respectfully submitted,

By: 

Andrew D. Crain  
Charles W. Steese  
Thomas M. Dethlefs  
U S WEST Law Department  
1801 California Street  
Suite 5100  
Denver, CO 80202  
(303) 672-2995

FENNEMORE CRAIG, P.C.  
Timothy Berg  
3003 North Central Ave., Suite 2600  
Phoenix, AZ 85012  
(602) 916-5421

Attorneys for U S WEST Communications, Inc.

**ORIGINAL and 10 copies of the foregoing filed  
this 1<sup>st</sup> day of June, 1999, with:**

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

**COPY of the foregoing hand  
delivered this 1<sup>st</sup> day of June, 1999, to:**

Maureen A. Scott, Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

Ray Williamson, Acting Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington St.  
Phoenix, AZ 85007

Jerry Rudibaugh, Chief Hearing Officer  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 W. Washington  
Phoenix, AZ 85007

1 **COPY of the foregoing faxed and mailed**  
2 **this 1<sup>st</sup> day of June, 1999, to:**

3 Donald A. Low  
4 Sprint Communications Company, LP  
5 8140 Ward Parkway SE  
6 Kansas City, MO 64114

7 Steven Duffy  
8 Ridge & Isaacson  
9 3101 North Central Avenue, Suite 1090  
10 Phoenix, Arizona 85012

11 Thomas Campbell  
12 Lewis & Roca  
13 40 N. Central Ave.  
14 Phoenix, AZ 85004

15 Joan S. Burke  
16 Osborn Maledon, P.A.  
17 2929 N. Central Ave., 21<sup>st</sup> Floor  
18 PO Box 36379  
19 Phoenix, AZ 85067-6379

20 Thomas F. Dixon  
21 Karen L. Clausen  
22 MCI Telecommunications Corp.  
23 707 17<sup>th</sup> Street # 3900  
24 Denver, CO 80202

25 Stephen Gibelli  
26 Residential Utility Consumer Office  
2828 North Central Ave., Suite 1200  
Phoenix, AZ 85004

Michael M. Grant  
Gallagher & Kennedy  
2600 N. Central Ave.  
Phoenix, AZ 85004-3020

Michael Patten  
Lex J. Smith  
Brown & Bain  
2901 N. Central Ave.  
Phoenix, AZ 85012

25 . . . .

26 . . . .

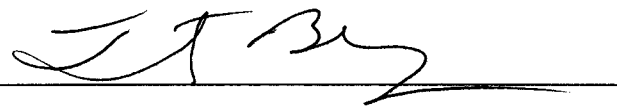
- 1 Daniel Waggoner  
Davis, Wright & Tremaine  
2 2600 Century Square  
1501 Fourth Avenue  
3 Seattle, WA 98101-1688
- 4 Richard S. Wolters  
Maria Arias-Chapleau  
5 AT&T Law Department  
1875 Lawrence Street # 1575  
6 Denver, CO 80202
- 7 **COPY of the foregoing mailed**  
**this 1<sup>st</sup> day of June, 1999, to:**
- 8 David Kaufman  
9 e.spire Communications, Inc.  
466 W. San Francisco Street  
10 Santa Fe, NM 87501
- 11 Frank Paganelli  
Colin Alberts  
12 Blumenfeld & Cohen  
1615 M Street, Suite 700  
13 Washington, D.C. 20036
- 14 Alaine Miller  
NEXTLINK Communications, Inc.  
15 500 108<sup>th</sup> Ave. NE, Suite 2200  
Bellevue, WA 98004
- 16 Carrington Phillip  
17 Cox Communications, Inc.  
1400 Lake Hearn Dr., N.E.  
18 Atlanta, GA 30319
- 19 Diane Bacon, Legislative Director  
Communications Workers of America  
20 5818 N. 7<sup>th</sup> St., Suite 206  
Phoenix, Arizona 85014-5811
- 21 Penny Bewick  
22 Electric Lightwave, Inc.  
4400 NE 77<sup>th</sup> Ave.  
23 Vancouver, WA 98662
- 24 Philip A. Doherty  
545 South Prospect Street, Suite 22  
25 Burlington, VT 05401
- 26

1 W. Hagood Bellinger  
5312 Trowbridge Drive  
2 Dunwoody, GA 30338

3 Joyce Hundley  
U.S. Dept. of Justice  
4 Antitrust Division  
1401 H Street, NW, # 8000  
5 Washington, DC 20530

6 Andrew O. Isar  
Telecommunications Resellers Association  
7 4312 92nd Ave., NW  
Gig Harbor, WA 98335

8 Raymond S. Heyman  
9 Randall H. Warner  
Two Arizona Center  
10 400 North 5<sup>th</sup> Street, Suite 1000  
Phoenix, AZ 85004-3906

11  
12   
13

14

15

16

17

18

19

20

21

22

23

24

25

26